

REMARKS

The Office Action dated November 6, 2006 has been carefully reviewed. Claims 1-9 are pending in the application. By this amendment, claims 1 and 6 have been amended and claim 5 has been canceled.

DOUBLE PATENTING

Claims 1-7 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14, 15, 17, 18, and 31 of U.S. Patent NO. 6,306,159. As such, Applicants hereby submit herewith a Terminal Disclaimer in which the owner of the above-identified patent application disclaims the terminal part of the statutory term of any patent granted on the present application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,306,159.

SECTION 102 REJECTIONS – COLVIN

Reconsideration of the rejection of claims 1-9 under 35. U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,066,160 to Colvin et al. (herein after “Colvin”) is respectfully requested.

Independent claim 1 has been amended to incorporate the limitation of claim 5 therein to recite that “the suture connects the first anchor to the second anchor by passing through the first anchor cannulation while traveling in a first direction, by passing through the second anchor hole, and by returning *through the first anchor cannulation while traveling in a second and opposite direction.*” Emphasis Added. Colvin does not disclose or suggest such a feature.

Anticipation exists only if all the elements of the claimed invention are present in a product or process disclosed, expressly or inherently, in a single prior art reference. *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). Colvin discloses a suture terminating device 10

having a main member 12 with two separate and distinct apertures 14(a) and 14(b) to receive opposite ends of a suture 16 therethrough. As noted by Colvin, the apertures 14(a) and 14(b) "cooperate as pairs, each member receiving one of the two ends of the suture being secured." See col. 8, lines 38-40. Further, FIG. 4 of Colvin shows suture 16 threaded through the first aperture 14(a) and then through the second aperture 14(b). In other words, the suture 16 of Colvin is threaded only once and in only one direction through each aperture 14(a) and 14(b) of Colvin. Colvin does not thread the suture 16 through any single aperture 14(a) or 14(b) twice and in two different directions. The Examiner appears to acknowledge this distinction on the record in the rejection of originally-filed claim 5 (now amended claim 1) where the Examiner calls out separate structures (14(a) and 14(b)) from Colvin to read on the claimed "first anchor cannulation". See page 3, lines 16-18 of the 11/6/06 Office Action. Accordingly, Colvin does not disclose or suggest a suture which passes "through the first anchor cannulation while traveling in a first direction" and which passes "through the first anchor cannulation while traveling in a second and opposite direction" as is recited in newly amended claim 1. As such, Colvin fails to disclose a required element of claim 1. Therefore, reconsideration of this rejection as it pertains to claim 1, as well as claims 2-4, depending either directly or indirectly from claim 1, is respectfully requested.

Claim 6 has been amended to correct a typographical error. Similar to amended claim 1, independent claim 6 recites that the claimed suture passes "through the first anchor cannulation while traveling in a first direction" and returns "through the first anchor cannulation while traveling in a second and opposite direction." Accordingly, for the reasons set forth above in regards to claim 1, reconsideration of this rejection as it pertains to claim 6, as well as claims 7-9, depending either directly or indirectly from claim 6, is respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that this application is in a condition for allowance. Action to that end is hereby solicited. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 231-7216.

The Commissioner is hereby authorized to charge any fees which may be due in connection with this response to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 26502-773682.

Respectfully submitted,

BARNES & THORNBURG LLP

  
Carli E. Stewart  
Attorney Reg. No. 51,058

Indianapolis, IN  
(317) 231-7216